

FEB 28 2006

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. .... 09/265,073  
Filing Date ..... March 9, 1999  
Inventor ..... David K. Ovard et al.  
Assignee ..... Micron Technology, Inc.  
Group Art Unit ..... 2745  
Examiner ..... M. Shimizu  
Confirmation No. .... 4081  
Customer No. .... 021567  
Attorney's Docket No. .... MI40-179  
Title: Wireless Communication Systems, Interrogators and Methods of Communicating  
Within a Wireless Communication System

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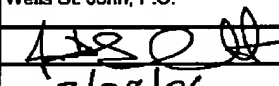
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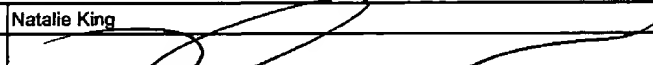
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	Art Unit	2635
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Date	2/28/06

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Within a Wireless Communication System

**REPLY BRIEF UNDER 37 C.F.R. §41.41**

To: Mail Stop Appeal - Patents  
Assistant Commissioner for Patents  
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Sir:

As discussed in the Brief of Appellant, the Office has failed to establish proper motivation to combine the teachings of the prior art in support of the 103 rejections. More specifically, as set forth in Section A of the Brief of Appellant, *In re Mills* provides that the mere fact that references can be combined does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Lee* discussed in Section A of the Brief of Appellant provides that proper motivation must be

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based on objective evidence of record and can not be resolved on subjective belief or unknown authority. As extensively discussed in the Brief of Appellant and below, there is no objective evidence of record of proper motivation to combine the prior art references in the 103 rejections and the motivational rationale provided by the Office is improperly based on subjective belief of the Examiner and/or unknown authority. Appellants respectfully submit that the Office has failed to meet their burden of establishing each step of prima facie 103 rejections and the 103 rejections are improper for at least these compelling reasons.

More specifically, MPEP 2142 (8<sup>th</sup> ed., rev. 3) states that the concept of prima facie obviousness allocates who has the burden of going forward with production of evidence in each step of the examination process and *the examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness*. The examiner bears the **initial burden** of factually supporting any *prima facie* conclusion of obviousness, that is, the initial burden is on the examiner **to provide some suggestion of the desirability of doing what the inventor has done**. MPEP §2142 (8<sup>th</sup> ed., rev. 3). As discussed in the Brief of Appellant and continued herein, the Office has failed to meet their burden of establishing proper motivation to combine the prior art references. Inasmuch as motivation is an essential element of prima facie 103 rejections, Appellants respectfully submit the 03 rejections are improper for this reason alone.

Referring to the Response to Argument Section on pages 18+ of the Examiner's Answer with respect to section A of the Brief of Appellant, the Appellants respectfully submit the Office has failed to correct the deficiencies of the final Office Action mailed February 9, 2005 (hereinafter "Final Office Action"). The Office has failed to identify any

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objective evidence of record to support the combination of the teachings of U.S. Patent No. 5,649,296 to MacLellan with the teachings of U.S. Patent No. 5,842,118 to Wood. Applicants have failed to uncover any teachings in the prior art to support the bald allegation on page 18 of the Examiner's Answer that MacLellan extends the range of communication. Indeed, Appellants have electronically searched MacLellan and have failed to identify any mention of "range." Further, Wood already clearly discloses adjustment and fine tuning of range and there is no evidence that Wood is lacking with respect to the communication range or that an improvement would result by combining the teachings of MacLellan. Further, the continued assertion on page 19 of the Examiner's Answer that Wood and MacLellan are combinable since they are common in the art of tag identification system fails to comply with the authority of the MPEP and *In re Lee* set forth in the Brief of Appellant which provides that the motivation to combine must be supported by objective evidence of record and the mere fact that references are combinable is insufficient without motivation to combine the reference teachings pursuant to *In re Mills*.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and the claims 1-42, 46, and 49-66 are allowable for the reasons set forth herein and the Brief of Appellant.

Referring to page 19 of the Examiner's Answer regarding the obviousness rejection of the claims over Wood, MacLellan and Cuckler (Section B of the Brief of Appellant), Appellant respectfully submits the rejections of the claims under 103 over Cuckler are improper because the Office has failed to meet their burden of establishing motivation to combine the plural references and accordingly have failed to establish a proper prima facie rejection of the claims under 103 over Cuckler. The Office has cited no objective evidence

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in support of motivation to combine the reference teachings. Regarding the statement on page 19 of the Examiner's Answer that the references are common in the art of remote or wireless communication and are combinable is insufficient because the mere fact that references can be combined is insufficient in the absence of motivation to combine the references. As set forth in section B of the Brief of the Appellant, Cuckler is directed towards intrusion detection (not for communicating data signals as disclosed in Wood or MacLellan) and there is no evidence of record that the disparate teachings of Cuckler can be combined with the teachings of Wood or MacLellan or that any improvements would result from the combination. There is no evidence of record that Wood or MacLellan are lacking with respect to range to motivate one to look to Cuckler for meaningful teachings. There is no evidence of record that an operable device would result from the combination of disparate reference teachings or that any improvement would be provided by the combination. There is no evidence of record to support the combination of reference teachings and the Office has improperly relied upon bald, cursory unsupported rationale. For at least these compelling reasons, Applicants respectfully submit the Office has failed to establish a proper prima facie rejection over Cuckler.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and the claims 1-42, 46 and 49-66 are allowable for the reasons set forth herein and the Brief of Appellant.

Referring to page 19 of the Examiner's Answer regarding the obviousness rejection of the claims over Wood, MacLellan and Cuckler (Section C of the Brief of the Appellant), Appellants respectfully submit the Office has failed to present during prosecution or in the Examiner's Answer proper motivation to combine the reference teachings in support of the

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rejection and the Office has failed to establish a proper prima facie 103 rejection. The mere fact that references may be common in the art of remote or wireless communication is insufficient in view of the *Mills* authority recited above. There is no objective evidence to support the motivation to combine the reference teachings and the only motivation is improperly based upon conclusory rationale of the Examiner which is not sufficient in view of the above-recited authority regarding proper motivation. Appellants also traverse any argument that motivation exists by the unsupported allegation of the Office on page 19 of the Examiner's Answer that data signals or communications are always modulated. Initially, as discussed in further detail below, Appellants dispute the accuracy of the bald unsupported statement set forth in the last full paragraph on page 19 of the Examiner's Answer that data signals or communications are always modulated. Additionally, the Office provides absolutely no rationale as to how adequate motivation is provided even if the unsupported statement on page 19 is true. Furthermore, MacLellan already discloses modulated signal communications (see e.g., modulator 202 of MacLellan). Accordingly, the modulated signal teachings of Cuckler are redundant to the modulation teachings of MacLellan and fail to provide proper motivation to combine the reference teachings.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and the claims 1-25, 27-42 and 51-66 are allowable for the reasons set forth herein and the Brief of Appellant.

Referring to pages 19-20 of the Examiner's Answer with respect to Section D of the Brief of Appellant, the Office has failed to recite any authority in support of the bald allegation that the disparate intrusion detection teachings of Cuckler are analogous to the data communications of Wood or MacLellan. Problems addressed by intrusion detection

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have not been demonstrated to be analogous to problems addressed by data communications and the Office has provided absolutely no rationale as to why one seeking a solution to data communications would likely seek a solution in intrusion detection art. Intrusion detection is not in the field of Appellants' endeavor nor is Cuckler reasonable pertinent to the particular problem with which the inventor was concerned. The bald unsupported statements of the Office set forth on pages 19-20 fail to demonstrate that Cuckler is analogous art and Appellants respectfully submit the rejections over Cuckler are improper for these additional reasons.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and the claims 1-42, 46 and 49-66 are allowable for the reasons set forth herein and section D of the Brief of Appellant.

Referring to page 20 of the Examiner's Answer with respect to Section E of the Brief of Appellant, Appellants respectfully submit that the mere fact that references may be common in the art of remote or wireless communication is insufficient for proper motivation inasmuch as the mere fact that references can be combined is not adequate for a proper prima facie 103 rejection. Furthermore, the Office at page 20 of the Examiner's Answer merely states operations of the teachings of U.S. Patent No. 6,084,530 to Pidwerbetsky and fails to recite any objective evidence or rationale as to why one of ordinary skill would be motivated to combine the prior art teachings of Pidwerbetsky with the other prior art teachings.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and the claims 58-63 and 66 are allowable for the reasons set forth herein and section E of the Brief of Appellant.



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Referring to page 20 of the Examiner's Answer with respect to Section F of the Brief of Appellant, the argument provided by the Office is the same as set forth in the rejection of claim 3 of the final Office Action.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and the claims 3, 4, 13, 14, 22 and 23 are allowable for the reasons set forth in Section F of the Brief of Appellant.

Referring to pages 20-21 of the Examiner's Answer with respect to Section G of the Brief of Appellant, Appellants respectfully submit that the mere fact that references Wood, MacLellan, Cuckler and additionally Lomp may be common in the art of remote or wireless communication is insufficient for proper motivation inasmuch as the mere fact that references can be combined is not adequate for a proper prima facie 103 rejection. Furthermore, the Office at page 21 of the Examiner's Answer merely states operations of the teachings of Lomp and fails to recite any objective evidence or rationale as to why one of ordinary skill would be motivated to combine the prior art teachings of Lomp with the other prior art teachings.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and the claims 4, 5, 14-15, 23, 26, 30, 38, 46 and 54 are allowable for the reasons set forth herein and Section G of the Brief of Appellant.

Referring to page 22 of the Examiner's Answer with respect to Section H of the Brief of Appellant, claim 51 recites (in combination with claim 1) the housing of the interrogator including circuitry configured to generate the forward link communication signal comprising a modulated signal and the communication station remotely located with respect to the

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housing and configured to receive the forward link communication signal. Claim 55 recites (in combination with claim 35) generating a forward link communication signal comprising a modulated signal using circuitry within the housing and receiving the forward link communication signal within the communication station. Claim 58 recites generating and modulating a polling signal using a source and first communicating the modulated polling signal and receiving the modulated polling signal within a communication station. The claims 51, 55, and 58 additionally recite in various forms using the communication stations, converting the modulated signals which are received by the communication stations from a first communication medium type to a second communication medium type. As set forth on page 21 of the Examiner's Answer, the Office relies upon the teachings of reference 101 as disclosing the housing (claims 51 and 55) or source (claim 58) and reference 103 of MacLellan as allegedly disclosing the claimed communication station. The Office baldly alleges that MacLellan discloses modulated signal intermediate a housing and a communication station. Appellants have failed to uncover any teachings in MacLellan that the signals intermediate the application processor 101 communicated using LAN 102 to processor 103 comprise modulated signals. Separate wired devices may communicate using baseband signals or using LAN arrangements such as Ethernet which do not utilize modulation or communicate modulated signals. To the contrary of the unsupported allegations of the Office, reference 202 of interrogator 103 of MacLellan is a modulator which operates to modulate signals which are outputted from the interrogator 103 using antenna 204 and fails to disclose any modulation of signals intermediate application processor 101 and interrogator 103.

Appellants respectfully submit that the Examiner's Answer fails to cure the

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deficiencies of the rejections set forth in the final Office Action and the claims 51, 55 and 58 are allowable for the reasons set forth herein and Section H of the Brief of Appellant.

Referring to pages 21-22 of the Examiner's Answer with respect to Section I of the Brief of Appellant, there is no evidence of record that the signal received by interrogator 103 from processor 101 of MacLellan is a modulated signal. To the contrary of the position of the Office that the signals received by reference 103 from application processor 101 are modulated, MacLellan clearly discloses modulation only using modulator 202 within reference 103 itself. Accordingly, MacLellan only discloses that reference 103 performs modulation of signals applied to transmitter 203 and fails to disclose that reference 103 receives any modulated signals from application processor 101 or LAN 102. Applicants respectfully traverse the position of the Office at pages 21-22 of the Examiner's Answer that data signals or communication signals are always modulated. More specifically, data may be communicated as baseband or in wired or networked arrangements without modulation. Accordingly, the statement on pages 21-22 of the Examiner's Answer that "[o]ne skilled in the art recognizes that data signal or communication signal is *always modulated* along communication path with optimum modulation scheme within the circuit modules and medium to be transmitted to the destination. How-else electronic data can be transmitted?" is not accurate. One skilled in the art does not understand that all data signals or communication signals are "always modulated." To the contrary, no modulation is provided in baseband communications or communications over some types of wired connections, for example including some network connections such as in an Ethernet network. MacLellan fails to disclose any teachings that reference 103 identified as allegedly disclosing the claimed communication station receives any modulated signals

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from application processor 101. There is no evidence that the LAN 102 of MacLellan must communicate modulated signals as alleged by the Office. Finally, MacLellan clearly discloses modulation of signals outputted by reference 103 to tag 105 but fails to disclose any receipt of modulated signals from processor 101 or LAN 102.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and the claims 53 and 57 are allowable for the reasons set forth herein and Section I of the Brief of Appellant.

Referring to page 22 of the Examiner's Answer with respect to Section J of the Brief of Appellant, the method of claim 60 recites the communications media comprising a wire for communicating the polling signals of the first communication medium type and comprising modulated signals. MacLellan is void of a wired medium communicating modulated signals intermediate references 101 and 103 of MacLellan. To the contrary, MacLellan merely discloses outputting of modulated signals using transmitter 203 and antenna 204. Limitations of claim 60 are not disclosed by the prior art even if the references are combined.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejection set forth in the final Office Action and claim 60 is allowable for the reasons set forth herein and Section J of the Brief of Appellant.

Referring to page 22 of the Examiner's Answer with respect to Section K of the Brief of Appellant, the Office relies upon the communications from the interrogator 103 to tag 105 as allegedly disclosing the modulating comprising RF modulating. However, in combination with the limitations of claim 58, the RF modulating of claim 62 pertains to the modulating of the source and the RF modulating communicates the modulated polling

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signal to the communication station. To the contrary, the applications processor 101 of MacLellan is identified as allegedly disclosing the source and the processor 101 is void of any RF modulating. The Office has failed to identify any teachings in Pidwerbetsky of the application processor 101 of Pidwerbetsky providing any RF modulating.

Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and claim 62 is allowable for the reasons set forth herein and Section K of the Brief of Appellant.

Referring to page 22 of the Examiner's Answer with respect to Section L of the Brief of Appellant, the Office relies upon the teachings of Wood as allegedly disclosing the forward link communication signal comprising a modulated signal and a command. However, this reliance upon Wood is inconsistent with the position of the Office on page 5 of the Examiner's Answer which states that Cuckler teaches the forward link communication signal. Wood fails to teach the forward link communication signal comprising a modulated signal and Cuckler fails to teach the modulated signal comprising a command. Even if the references are combined, the combination fails to disclose or suggest the forward link communication signal comprising a modulated signal and a command. Limitations of claims 64 and 65 are not taught by the prior art even if the reference are combined.

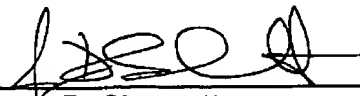
Appellants respectfully submit that the Examiner's Answer fails to cure the deficiencies of the rejections set forth in the final Office Action and claims 64-65 are allowable for the reasons set forth herein and Section L of the Brief of Appellant.

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Reversal of the rejections of the claims and allowance of the claims is respectfully requested for at least the reasons discussed herein and the reasons set forth in the Brief of Appellant.

Respectfully submitted,

Dated: 2/28/06

By:   
James D. Shaurette  
Reg. No. 39,833